United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
	)	**Docket No. 18-1381**
and	)	**Issued: April 8, 2019**
	)	
DEPARTMENT OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN & FAMILIES, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 2, 2018 appellant, through counsel, filed a timely appeal from a January 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury on December 6, 2017 while in the performance of duty, as alleged.

FACTUAL HISTORY

On December 7, 2017 appellant, then a 49-year-old financial operations specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2017 at 12:50 p.m., while teleworking from his residence, he was seated at a desk using a notebook computer, rose to a standing position, then fell when his left ankle gave way. He stopped work at the time of injury. Appellant's supervisor indicated that his duty shift was from 9:00 a.m. to 5:00 p.m. and that the claimed incident was employment related. In an authorization for examination and/or treatment (Form CA-16) dated December 6, 2017, the supervisor noted that appellant "fell at his residence while teleworking and sprained his left ankle."

By development letter dated December 21, 2017, OWCP advised appellant of the type of medical and factual evidence needed to establish his claim, including a detailed description of the December 6, 2017 employment incident specifying what he was doing at the time the injury occurred, and a narrative report from his physician explaining how and why that event would cause the claimed injury. It afforded him 30 days to submit the necessary evidence.

In response, appellant submitted a December 7, 2017 report from Dr. Frederick Richardson, Jr., an attending Board-certified family practitioner. Dr. Richardson opined that appellant sustained a left ankle sprain on December 7, 2017 when he fell at his residence while teleworking. He noted that the "cause of this problem is related to work activities." Dr. Richardson indicated in a form report dated December 7, 2017 that appellant had sustained a fracture of the left cuboid bone related to unspecified employment activities.[4] He restricted appellant to sedentary work.

In a report dated December 8, 2017, Dr. Vivek Patel, an attending podiatrist, related that on December 6, 2017, appellant was seated at his desk while at work and rose to a standing position. "[Appellant's] left ankle apparently gave out and he rolled it." Dr. Patel diagnosed a

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the January 24, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

[4] Dr. Richardson obtained x-rays of the left foot and ankle on December 7, 2017 which demonstrated a fracture of the distal lateral aspect of the cuboid bone. In an addendum report dated December 8, 2017, he diagnosed a fracture of the left cuboid bone.

nondisplaced left cuboid fracture and fibromyalgia. He prescribed a controlled ankle movement (CAM) walking boot.

By decision dated January 24, 2018, OWCP denied the claim finding the December 6, 2017 incident had not occurred in the performance of duty. It accepted that the December 6, 2017 incident occurred as alleged. OWCP found, however, that the evidence of record did not establish that appellant sustained an injury and/or medical condition that arose during the course of employment and within the scope of compensable work factors as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[8] The phrase "sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[9] The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[10] This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury.[11]

[5] *Supra* note 2.

[6] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[7] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] 5 U.S.C. § 8102(a).

[9] *A.K.*, Docket No. 16-1133 (issued December 19, 2016); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[10] *D.L.*, 58 ECAB 667 (2007); *Mary Keszler*, 38 ECAB 735, 739 (1987).

[11] *M.T.*, Docket No. 16-0927 (issued February 13, 2017); *Vitaliy Y. Matviiv*, 57 ECAB 193 (2005); *Eugene G. Chin*, 39 ECAB 598 (1988).

OWCP's procedures address off-premises injuries sustained by workers who perform service at home. It provides:

> "Ordinarily, the protection of [FECA] does not extend to the employee's home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employer. The official superior should be requested to submit a statement showing:
>
> > (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
> >
> > (b) The particular work the employee was performing when injured; and
> >
> > (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion."[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that on December 6, 2017, during a scheduled telework shift, while sitting at his desk using a notebook computer, appellant rose to a standing position and his left ankle gave way, causing him to fall and sustain a diagnosed left ankle injury. However, it denied the claim finding that the available evidence of record was insufficient to establish that appellant sustained the injury while in the performance of duty. Appellant contends that his injury is compensable because he was injured while working at his residence under a telework agreement with the employing establishment. In his Form CA-1, appellant related that on December 6, 2017 he was working on a notebook computer and when he stood his left ankle gave way and he fell, however, he did not submit a detailed account of the alleged incident or any additional corroborating factual evidence describing how he sustained an injury on that date. The Board has found that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.[13]

By letter dated December 21, 2017, OWCP informed appellant that the evidence it received was insufficient to establish his claim as it lacked a factual basis description of the employment incident and how it resulted in an injury. It asked appellant to complete an attached questionnaire. However, at the time of OWCP's decision on January 24, 2018 the record did not contain his

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); *R.H.*, Docket No. 15-1339 (issued June 13, 2016); *J.J.*, Docket No. 15-1365 (issued September 23, 2015); *J.K.*, Docket No. 15-0198 (issued March 10, 2015). *See also S.F.*, Docket No. 09-2172 (issued August 23, 2010).

[13] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

response. As appellant has not provided a sufficient factual statement describing the December 6, 2017 incident, he has not met his burden of proof to establish his claim.[14]

OWCP procedures provide coverage under FECA for off-premises workers who perform services from home for their employing establishment.[15] OWCP has provided that employees directly engaged in the performance of their duties during authorized telework are covered under FECA.[16] In these cases, the procedures direct OWCP how to determine whether the employee was performing assigned duties, was engaged in an activity reasonably incidental to the assignment, or had deviated from the assignment and was engaged in a personal activity.[17] No such development was undertaken in this claim.

The Board finds that OWCP failed to properly adjudicate whether appellant's off-premises activity was incidental to his employment duties at the time of the claimed injury on December 6, 2017.[18] As noted, OWCP procedures provide that the official superior should provide a statement regarding the details of the matter and, if such statements are not sufficiently detailed, additional statements should be obtained from others in a position to know the circumstances.[19] Although appellant's supervisor provided generalized statements on the Form CA-1 and an authorization for examination and/or treatment (Form CA-16) dated December 6, 2017, the Board finds these statements insufficiently detailed to constitute proper development of the factual basis of the claim.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[20] Accordingly, the January 24, 2018 decision will be set aside and the case remanded for further development, including, but not limited to obtaining and analyzing evidence as to whether appellant was reasonably fulfilling the duties of his federal employment or engaged in activities incidental thereto on December 6, 2017.

[14] *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

[15] Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.804.5(a)(4). *See also S.F.*, *supra* note 12; *see Mona M. Tates*, 55 ECAB 128 (2003); *Julietta M. Reynolds*, 50 ECAB 529 (1999).

[16] *Id.*

[17] Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.804.5(b); *R.H.*, *supra* note 12.

[18] *R.H.*, *supra* note 12.

[19] *Id.*

[20] *Id.*, *see Phillip L. Barnes*, 55 ECAB 426 (2004); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002).

Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim.[21]

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: April 8, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[21] The Board notes that the employing establishment issued a Form CA-16 on December 6, 2017. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018), *Tracy P. Spillane*, 54 ECAB 608 (2003).